

**NOTICE OF PROPOSED ADOPTION OF REGULATION
AND STATEMENT OF REASONS**

**California Code of Regulations
Title 2, Administration
Division 1, Administrative Personnel**

DATE: March 12, 2002

TO: ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS, AND
MEMBERS OF THE GOVERNOR'S CABINET

SUBJECT: Answers or Appeals Filed with the State Personnel Board

AUTHORITY:

Under authority established in Government Code Section 18701, the State Personnel Board (SPB) has proposed to adopt new Section 63 of Title 2 of the California Code of Regulations, to specify filing requirements when state employees or applicants for state employment file answers or appeals with SPB regarding investigations or hearings conducted by SPB concerning, but not limited to, Notices of Adverse Action (Government Code Sections 19575 and 19590), Notices of Rejection During Probationary Period (Government Code Section 19175), Notices of Medical Action (Government Code Section 19253.5), and Notices of Non-Punitive Action (Government Code Section 19585). This new section will specify that any such answer or appeal filed with SPB must specify any affirmative defenses the employee or applicant intends to raise during the course of the hearing or investigation, and any relief, including compensatory damages, the employee or applicant is seeking, unless such relief is mandated by statute or SPB rule. The section will also provide for amended answers or appeals to be filed with SPB to include additional affirmative defenses or requests for relief, provided that the appointing power or other responding party is afforded an opportunity to conduct discovery concerning the newly-raised affirmative defenses or requests for relief.

REFERENCE:

This regulation is proposed for adoption to implement, interpret, and/or make specific Government Code Sections 18670, 18703, 19175, 19253.3, 19575, 19585, and 19590.

Subject: Answers or Appeals Filed with the State Personnel Board
March 12, 2002
Page 2

PUBLIC HEARING:

Date and Time: May 7, 2002 from 1:45 to 2:15 p.m.

Place: Auditorium
801 Capitol Mall, Room 150
Sacramento, California

Purpose: To receive oral public comments about this action.

WRITTEN PUBLIC COMMENT PERIOD:

The public comment period for written comments will close May 6, 2002, at 5:00 p.m. This is to allow time for SPB staff to provide copies of any written comments to the five-member State Personnel Board (Board) for their consideration at the time of the hearing; however, any person may also submit written comments about the proposed changes at the hearing. To be considered by the Board, written comments must be received to the attention of Bruce Monfross at the State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010, before the close of the written comment period. During the 45-day written comment period, written comments may also be e-mailed to Bruce Monfross at bmonfross@spb.ca.gov or faxed to (916) 653-4256.

AVAILABILITY OF PROPOSED TEXT AND STATEMENT OF REASONS/CONTACT PERSONS:

Copies of the express terms of the proposed action, the Statement of Reasons, and all of the information upon which the proposal is based are available upon request directed to SPB's contact person. The rulemaking file is available for review during normal business hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. Please contact Bruce Monfross at (916) 653-1403 for additional information regarding this action. The backup agency contact for this action is Steve Unger at the State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010, telephone (916) 651-8461. Questions regarding the substance of this regulation should be directed to the contact person. Questions regarding the regulatory process in conjunction with this regulation should be directed to the backup contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, SPB will make the full text of the changed regulation available for at least 15 days before the date the regulation is permanently amended.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Government Code Section 18701 authorizes the Board to prescribe, amend, and repeal regulations for the administration and enforcement of the Civil Service Act (Government Code Sections 18500 et seq.).

Government Code Section 18670 authorizes SPB to hold hearings and conduct investigations concerning all matters related to the enforcement and effect of the Civil Service Act.

Government Code Section 18703 authorizes SPB to provide processes for dismissals, demotions, suspensions, and other adverse action for or in the state civil service in accordance with Article VII of the Constitution of the State of California and the Civil Service Act.

Government Code Section 19175 authorizes state employees who have been rejected during their probationary period to file an appeal of the rejection during probationary period with SPB.

Government Code Section 19253.5(f) authorizes state employees who have been transferred, demoted, or terminated for medical reasons to file an appeal of the medical action with SPB.

Government Code Section 19575 authorizes state rank-and-file employees who have been subjected to formal disciplinary action to file an answer concerning the disciplinary action with SPB.

Government Code Section 19585 authorizes state employees who have been transferred, demoted, or terminated for non-punitive reasons as a result of their failure to meet requirements for continuing employment to file an appeal of the non-punitive action with SPB.

Government Code Section 19590 authorizes state managerial employees who have been subjected to formal disciplinary action to file an answer concerning the disciplinary action with SPB.

SPB is proposing to adopt new Section 63 of Title 2 of the California Code of Regulations in order to:

1. Expedite the hearing or investigation process by timely notifying all parties to the hearing or investigation of all issues that will be presented during the course of the hearing or investigation, so that timely discovery can be conducted, thereby reducing or eliminating the need for continuances to be granted in the case as

the result of affirmative defenses or requests for relief that would otherwise be first raised during the course of the hearing.

2. Inform individuals filing answers or appeals with SPB of those specific matters that must be contained within the answer or appeal, and notifying individuals that any affirmative defense or request for relief that is not set forth in the answer or appeal shall be deemed waived, unless an amended answer or appeal is filed in accordance with SPB rule.

IMPACT ON SMALL BUSINESSES:

No impact on small businesses is anticipated from the implementation of the proposed regulation since it would affect only state agencies and state employees and applicants for state employment.

LOCAL MANDATE:

SPB has determined that the proposed action has no mandate upon local agencies or school districts and therefore requires no reimbursement pursuant to Section 17561 of the Government Code.

COST ESTIMATES OF PROPOSED ACTION:

Costs or Savings to State Agencies:

The proposed regulation has been created in order to clarify the filing requirements that an individual must satisfy when filing an answer or appeal with SPB, including, but not limited to, answers or appeals filed with SPB regarding hearings or investigations conducted by SPB concerning Notices of Adverse Action (Government Code Sections 19575 and 19590), Notices of Rejection During Probationary Period (Government Code Section 19175), Notices of Medical Action (Government Code Section 19253.5), and Notices of Non-Punitive Action (Government Code Section 19585). It is anticipated that any additional costs that the proposed regulation may cause for state agencies will be insignificant.

Impact on Housing Costs:

The proposal will not affect housing costs.

Costs of Savings in Federal Funding to the State:

No impact.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies:

The proposal does not impose nondiscretionary costs or savings on local agencies.

Cost Impact on Representative Private Persons or Businesses:

SPB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESS:

SPB has made an initial determination that the proposed action will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT REGARDING THE EFFECT ON JOBS OR BUSINESSES:

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

DETERMINATION:

SPB must determine that no alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SPB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

FINAL STATEMENT OF REASONS:

Upon its completion, copies of the Final Statement of Reasons may be obtained from the contact person or the backup contact person.

ACCESSING INFORMATION REGARDING THIS RULEMAKING FILE ON THE STATE PERSONNEL BOARD WEB SITE:

The text of the proposed regulation, as well as the Notice of Proposed Adoption of Regulation and Statement of Reasons, will be on the State Personnel Board Web site at: www.spb.ca.gov.

STATEMENT OF REASONS:

California's Civil Service Act authorizes SPB to conduct hearings or investigations concerning all matters related to the enforcement of the Civil Service Act. Specific provisions of the Civil Service Act also permit state employees or applicants for state employment to file answers or appeals with SPB, requesting that SPB conduct a hearing or investigation concerning employment actions taken against the employee or applicant. Those statutory provisions authorizing the employee or applicant to file an answer or appeal with SPB do not specify what information must be contained within the answer or appeal and, as a general rule, most employees or applicants file a very general statement of appeal requesting an investigation or hearing, without specifying any affirmative defenses or requests for relief that the employee or applicant intends to

raise during the course of the investigation or hearing. It is often only after the investigation or hearing has commenced that the employee or applicant notifies the responding party of the specific affirmative defenses or requests for relief that the employee or applicant intends to put at issue during the investigation or hearing. It has been SPB's experience that, once notified of those specific issues and in order to prepare a defense as to those issues, the responding party often requests a continuance of the proceedings in order to conduct discovery concerning those issues. Since due process and fundamental principles of fairness usually dictate that the responding party be afforded an opportunity to defend itself against those allegations, just as the employee or applicant was afforded an opportunity to conduct discovery in order to defend himself or herself against the allegations made by the responding party, SPB often finds itself in the position of granting continuances in order that such discovery can be conducted. This, in turn, prolongs the hearing or investigation and serves to ensure that the controversy will not be resolved in as timely a manner as might otherwise be possible.

As a result of the foregoing, SPB proposes to require that answers or appeals filed with SPB, requesting a hearing or investigation be conducted by SPB, notify the responding party of all affirmative defenses and requests for relief that the employee or applicant intends to raise during the course of the hearing or investigation. This initial notice will serve to better frame the issues of the hearing or investigation, and will enable timely discovery to be conducted, thereby reducing or eliminating the need for continuances to be granted after a hearing or investigation has already commenced. Any affirmative defense or request for relief not raised in the answer or appeal will be deemed waived, unless such relief is already mandated by statute or SPB rule. This proposal also provides a safety valve, permitting employees or applicants to file an amended answer or appeal to include additional affirmative defenses or requests for relief, if the employee or applicant lacked sufficient information to determine that the additional affirmative defense or request for relief would have been appropriate at the time that the initial answer or appeal was filed.

The proposed regulation will serve to:

1. Expedite the hearing or investigation process by timely notifying all parties to the hearing or investigation of all issues that will be presented during the course of the hearing or investigation, so that timely discovery can be conducted, thereby reducing or eliminating the need for continuances to be granted in the case as the result of affirmative defenses or requests for relief that would otherwise be first raised during the course of the hearing.
2. Inform individuals filing answers or appeals with SPB of those specific matters that must be contained within the answer or appeal, and notifying individuals that any affirmative defense or request for relief that is not set forth in the answer or

Subject: Answers or Appeals Filed with the State Personnel Board
March 12, 2002
Page 7

appeal shall be deemed waived, unless an amended answer or appeal is filed in accordance with SPB rule.

Mike Willihnganz
Chief, Policy Division

Attachment: Text of Proposed Adoption of Regulation

Regulation Governing Answers or Appeals Filed with the State Personnel Board

For this adoption, text added to the regulation is indicated by underline.

Title 2. ADMINISTRATION

Division 1. Administrative Personnel

Chapter 1. State Personnel Board

§ 63. Answers or Appeals Filed with the Board.

(a) Each answer or appeal filed with the Board concerning any evidentiary hearing assigned to a Board administrative law judge, including, but not limited to: Notices of Adverse Action, Notices of Rejection During Probationary Period, Notices of Medical Action, or Notices of Non-Punitive Action, shall be filed with the Board within the time period prescribed by statute or Board rule.

(b) Each answer or appeal shall be written and shall set forth each affirmative defense the appellant believes to be applicable to his or her case, and all specific relief, including compensatory damages, that the appellant is seeking. Any affirmative defense or request for relief not raised in the answer or appeal shall be deemed waived, unless such relief is mandated by statute or Board rule, or unless an amended answer or appeal is filed with the Board, in accordance with statute or Board rule. Each amended answer or appeal filed with the Board shall also be served on the appointing power or other responding party on the same date that the amended answer or appeal is filed with the Board.

(c) No amended answer or appeal may be filed with the Board within **15** days of the date set for commencement of the initial hearing date, except upon petition and determination by the administrative law judge of good cause. In determining good cause, the administrative law judge shall consider the necessity and reasons for the amendment, and the diligence of the moving party in filing the amended answer or appeal.

(d) When an amended answer or appeal is filed with the Board, the initial hearing date may be continued, at the request of the appointing power or other responding party, in order to afford the appointing power or other responding party an opportunity to conduct discovery,

pursuant to the provisions of Sections 57.1 – 57.4, concerning any new affirmative defense or request for relief raised in the amended answer or appeal. Any such discovery shall be related solely to those additional affirmative defenses or requests for relief raised in the amended answer or appeal.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections, 18670, 18703, 19175, 19253.3, 19575, 19585 and 19590, Government Code.